

STATE OF MAINE

DEPARTMENT OF MARINE RESOURCES

**IN THE MATTER OF THE APPLICATION)
OF ERIC PETERS FOR A LIMITED-)
PURPOSE AQUACULTURE LEASE)
LOCATED NORTH OF DAVIS ISLAND,)
SHEEPSHOT RIVER, EDGECOMB,)
LINCOLN COUNTY, MAINE)**

**FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND DECISION**

On March 5, 2002, Eric Peters of Nobleboro, Maine applied for a limited-purpose (experimental), commercial type, aquaculture lease of 2 acres in the coastal waters of the State of Maine, located north of Davis Island in the Sheepscot River, in the town of Edgecomb, Lincoln County, Maine. The applicant requested the lease for a term of three years for the purpose of cultivating American oysters (*Crassostrea virginica*), European oysters (*Ostrea edulis*), hard clams (*Mercenaria mercenaria*), and sea scallops (*Placopecten magellanicus*) using suspended and bottom culture techniques. The application was accepted as complete on September 30, 2002.

As provided in 12 M.R.S.A. §6072-A(6), the Commissioner is not required to hold a public hearing on a limited-purpose lease application unless 5 or more persons request a public hearing within the 30-day comment period provided in 12 M.R.S.A. §6072-A(5). Notice of Mr. Peters' application was published in the October 17, 2002 issue of the *Lincoln County News* newspaper. The applicant, the town of Edgecomb, riparian owners, and other interested parties were notified by letter dated October 15, 2002. No requests for a hearing were received during the 30-day comment period.

Approval of limited-purpose aquaculture leases is governed by 12 M.R.S.A. §6072-A. This statute provides that the Commissioner of the Department of Marine Resources (DMR) may grant a limited-purpose lease if he determines that the project will not unreasonably interfere

with the ingress and egress of riparian owners, navigation, fishing or other uses of the area, taking into consideration the number and density of aquaculture leases in an area; the ability of the site and surrounding areas to support ecologically significant flora and fauna; or the use or enjoyment within 1,000 feet of municipally, state or federally owned beaches, parks, or docking facilities. The Commissioner must also determine that the applicant has demonstrated that there is an available source of organisms to be cultured for the lease site.

Evidence Concerning the Nature and Impact of the Proposed Lease

In accordance with 12 M.R.S.A. §6072-A(8) and the Department's regulations, Chapter 2.64(2), Mr. Peters submitted an application for a limited-purpose (experimental) aquaculture lease. This proposed experimental lease is sought to conduct commercial research and development on the viability of raising American oysters, European oysters, hard clams, and sea scallops. The applicant requests the maximum lease term of three (3) years. The proposed site consists of 2 acres with the approximate dimensions of 179 by 475 feet.

According to the application, the proposed lease activities would include the direct planting of shellfish on the seafloor, the placement of industry standard type "ADPI" mesh bags, secured on the seafloor, the use of floating nursery trays and ADPI bags, and the placement of ADPI bags into bottom trays. All gear will be secured to ¼" thick by 350' long polypropylene lines, which in turn will be attached to ½" thick by 180' long polypropylene head lines moored on each end by 500-700 lb. granite blocks. The head lines will be secured in the middle with 75-100lb mushroom anchors.

The proposed lease site would be accessed by boat from the Wiscasset Town Ramp. Seeding and maintenance would be accomplished from a boat or by SCUBA diving. Harvest of bottom planted shellfish would be done by hand using SCUBA gear or by dragging a lightweight oyster dredge. Shellfish contained in mesh bags and trays would be retrieved by boat.

Up to 200,000 American oysters would be planted each year and up to 10,000 each of hard clams, European oysters and sea scallops. According to the application all seed shellfish would be obtained from the hatcheries of Muscongus Bay Aquaculture in Bremen, Maine.

In accordance with Department regulations, Chapter 2.64(2), Mr. Peters provided an environmental characterization of the proposed lease area. The environmental characterization was determined following five dives in the months of June of 2000, and April, July, September, and November of 2001. The applicant describes the river bottom at the proposed lease site as having a graded topography with sediments that are rock and gravel on the northeast side and coarse sand and sand as you move southwest. The southwest side consists of a sandy mud. The low and high tide depths are estimated at 5 and 10 feet respectively on the northeast side and 10 and 15 feet on the southwest side. The local flora includes a small amount of kelp and fauna includes green crabs. The current flow is tidally driven and estimated to be an average of two knots and flows northeast on the flood and southwest on the ebb.

The applicant provided a statement by Ronald Aho of the Department of Marine Resources regarding the existing uses of the proposed lease site. Mr. Aho stated that the area is adjacent to productive worm and clam flats in Cod Cove and there is evidence of clam harvesting activity south of the site. He also stated that the gear may block access across the site to the flats of Cod Cove at some stages of the tide, but that the area is readily accessible by approaching the flats from the eastern side of a small island north of the site. The applicant's observations of the existing uses of the area were of occasional recreational fishing in the summer. According to the applicant hook and line fishing outside the boundaries of the floating gear would be acceptable. Additionally, the application indicates that the proposed lease site is not used by local landowners.

The Department's Aquaculture Environmental Coordinator (AEC) and his assistant conducted a site visit at the proposed lease area on November 19, 2002. The AEC created a

site report summarizing the information obtained during the site visit. According to the report, the proposed site is located approximately 600 feet north of Davis Island, in shallow water depths ranging approximately from 11 to 15 feet. There would be approximately 948 feet of distance between the SW corner of the proposed lease and the main navigation channel. The proposed site is situated just outside of the mouth of Cod Cove with the nearest point of land in Cod Cove approximately 1,870 feet from the SE corner of the proposed lease site. The nearest aquaculture lease is located approximately 888 feet due north. The applicant will access the proposed lease from the Wiscasset Town Ramp located 3,855 feet southwest of the proposed lease site. No moorings, docks or riparian access points were observed in the area.

The AEC navigated the four corners of the proposed lease site as described by coordinates provided in the application. Four corner buoys were in place. The location of the northeastern corner buoy was in agreement with the coordinates provided in the application. However, the remaining three buoys were between 30 and 90 feet from their intended locations. The AEC therefore used the coordinates provided in the application for all metes and bounds descriptions and all other calculations. The distances between corners remain as described in the application as 184 by 472.5 feet.

The AEC indicated that there is an extensive mud flat at low water located east of the proposed lease site that is used by clammers and wormers. The proposed lease site is located in water that is nine feet deep at low water. To get to the mud flats, shoal water approximately 2-4 feet deep needs to be crossed. In the AEC's opinion, while not nine feet in depth, sufficient water is available outside the lease site to allow transit to and from the mud flats, during tidal stages, in the types of vessels commonly used in these fisheries. According to the AEC's report, other navigation in the area might consist of small recreational boats. Lobstering would not occur in the lease site due to its shallow depths.

According to the AEC's report the proposed lease is located in an area classified as open for the harvest of shellfish by the Department's Water Quality Division. Due to the presence of the Wiscasset Sewage Treatment Plant, a conditionally approved area is located to the west of the proposed lease site. Also, according to the report the proposed lease does not fall within any endangered, threatened or significant wildlife habitats regulated by the Department of Inland Fisheries and Wildlife (IF&W).

The Harbormaster for the town of Edgecomb submitted comments to the Department regarding the application. He indicated that the proposed site is currently used by clammers and wormers to access the mud flats. He also indicated that there are no permitted moorings within the proposed lease boundaries and the proposal does not interfere with traditional storm anchorages. According to the Harbormaster, there was one instance of lobstering in the past and there is striped bass fishing every year within the area of the proposed lease. He further indicated that the mooring gear specified in the application is adequate.

Findings of Fact

The proposed lease is located approximately 600 feet north of Davis Island and 1,870 feet from the nearest point of land in Cod Cove. Access to the proposed lease would be by boat from the Wiscasset Boat Ramp. There are no moorings, docks or riparian access points located in the area of the proposed lease site. No use of riparian land was requested or required. Based on this evidence, I find that the lease will not unreasonably interfere with the ingress and egress of riparian owners.

The proposed lease is located in shallow water depths of approximately 5 to 10 feet at low tide, 948 feet from the main navigational channel. The proposed lease is also located west of mud flats used by clammers and wormers. To access the mud flats, shoal water approximately 2-4 feet deep must be crossed. There is sufficient water outside the proposed lease site to allow access to and from the mud flats. Additionally, the mud flats are readily accessible from

the eastern side of Goose Island. Other navigation in the area consists of small recreational boats. Based on the foregoing, I find that the proposed lease will not unreasonably interfere with navigation.

Fishing in the area of the proposed lease site consists of occasional recreational fishing and the aforementioned clamming and worming. Lobstering does not occur on the proposed site. The nearest existing aquaculture lease is located approximately 888 feet due north (up river). The area of the proposed lease is classified as “open” for the harvest of shellfish. I find that the proposed lease will not unreasonably interfere with fishing or other uses of the area.

Existing flora and fauna observed at the proposed site consists of kelp and green crabs. The current flow is tidally driven and estimated to be an average of two knots. Nothing in the AEC’s report or application indicates there would be any unreasonable interference with the local flora and fauna. Based on this evidence, I find that the proposed activities will not unreasonably interfere with the ability of the site and surrounding areas to support existing ecologically significant flora and fauna.

All seed shellfish will be obtained from Muscongus Bay Aquaculture, Bremen, ME. Based on this evidence, I find that there is an available source of American oysters, European oysters, hard clams, and sea scallops.

The proposed lease site is located over 3,855 feet from the nearest public boat landing located in Wiscasset. Based on this evidence, I find that the proposed lease site activities will not unreasonably interfere with public use or enjoyment within 1,000 feet of any municipally, state, or federally owned beaches, parks, or docking facilities.

Conclusions of Law

Based on the above findings, I conclude that:

1. The aquaculture activities proposed for this site will not unreasonably interfere with the ingress and egress of any riparian owner;
2. The aquaculture activities proposed for this site will not unreasonably interfere with navigation;
3. The aquaculture activities proposed for this site will not unreasonably interfere with fishing or other uses of the area, taking into consideration the number and density of aquaculture leases in the area;
4. The aquaculture activities proposed for this site will not unreasonably interfere with the ability of the lease site and surrounding areas to support existing ecologically significant flora and fauna;
5. The applicant has demonstrated that there is an available source of the American oysters, European oysters, hard clams, and sea scallops to be cultured for the lease site; and
6. The aquaculture activities proposed for this site will not unreasonably interfere with public use or enjoyment within 1,000 feet of municipally, state or federally owned beaches, parks, or docking facilities.

Accordingly, the evidence in the record supports a finding that the proposed aquaculture activities meet the requirements for the granting of an aquaculture lease set forth in 12 M.R.S.A. §6072-A.

Decision

Based on the foregoing, the Commissioner grants the applicant's requested limited-purpose commercial lease of 2.0 acres to the applicant from the date of this decision for the purposes of cultivating American oysters (*Crassostrea virginica*), European oysters (*Ostrea edulis*), hard clams (*Mercenaria mercenaria*), and sea scallops (*Placopecten magellanicus*) using bottom and suspended culture techniques. The applicant shall pay the State of Maine rent in the amount of \$50.00 per acre per year. The applicant shall post a bond or establish an escrow in the amount of \$5,000 conditioned upon its performance of the obligations contained in the aquaculture lease documents and all applicable statutes and regulations. A limited-purpose

lease for commercial aquaculture research and development conveys only those rights specified in the lease.

Conditions to be Imposed on Lease

The Commissioner may establish conditions that govern the use of the lease area and impose limitations on aquaculture activities. Conditions are designed to encourage the greatest multiple, compatible uses of the lease area, while preserving the exclusive rights of the lessee to the extent necessary to carry out the purposes of the aquaculture law.

The following conditions are placed on this lease:

- (1) navigation and recreational fishing are allowed on the open areas of the lease; and
- (2) the lease area shall be marked in accordance with U.S. Coast Guard and Department of Marine Resources regulations Chapter 2.80.

The Commissioner may commence revocation procedures if he determines that substantial aquaculture has not been conducted within the preceding year or that the lease activities are substantially injurious to marine organisms. If any of the conditions or requirements imposed in this decision, in the lease, or in the law are not being observed, the Commissioner may revoke the aquaculture lease.

Dated: _____

George D. Lapointe (Commissioner)
Department of Marine Resources